AN ARGUMENT,

SHEWING

That 'tis Impoſſible for the NATION to be Rid of the GRIEVANCES Occaſion'd by the Marſhal of the *KING'S-BENCH*, and Warden of the *FLEET*, without an Utter Extirpation of their preſent Offices.

WITH

PROPOSALS

FOR A

New Conſtitution

Of thoſe Offices.

By way of Letter to a Member of Parliament.

Cuncta prius tentanda; ſed immedicabile vulnus,
Enſe recidendum eſt, ne pars ſincera trahatur.
Ovid Met. Lib. 1.

London, Printed for *Richard Standfaſt*, Bookſeller, near *Temple-Bar*. MDCXCIX.

A

TO

Sir William Duncombe, *Bar.*

SIR,

THO' I have not the Honour of an Acquaintance with you, yet since I found your Name in the Printed Votes, as a Petitioner for Redress, against the Warden of the Fleet, and that you were so great an Instance, of the Oppression which the Gentry of England, as well as the Tradesmen, and Commonalty, labour under; I presum'd to Affix your Name to these Papers, which I'm sure are wrote with no other Design, than to Advance the Publick Advantage, by endeavouring to Suppress a Nest of Pestilent Vipers, who have Stung, and been equally Pernicious, to all Ranks and Degrees of Men, except only those who have nothing to lose. The Riches of England consists in Land and Trade, which are the Pillars of the Government, and must be Maintained and Supported, but both are Weakened, and Terribly Shaken, by the Defect in Execution of the Legal Process; Lands have lost their

Ancient Value, and do not Answer the Profits as formerly: For how many Knavish Tenants do continually decline to pay their Rents, or go off with good round Sums in their Pockets, and when their Landlords call 'em to Account, and fling 'em into the Country Gaol, the next News they hear, is of a Habeas Corpus, *to Remove 'em to the* King's-Bench *or* Fleet, *and in a Fortnights time, down they come, and take another Farm next Hedge to their former Landlords. As for the City (where Trade does chiefly flourish) That Suffers infinitely more, for as Differences on Contracts and Bargains do arise, so there are more frequent Opportunities of Repairing to the Law for Satisfaction: And one would think that an honest Debt for Goods Sold and Deliver'd, should be Paid, but unless a Man will be a Law to himself, (which we can hardly hope for in this degenerate Age) there is no Money to be had; the Creditor may Arrest him, and have Judgment against him, and Charge him in Execution; and what then? Why then he comes Abroad, and there's an end of the matter.*

——pudet hæc opprobia nobis
Et dici potuisse, & non potuisse refelli.

I ever

I ever thought that Trade had been the Darling of the English *Nation, and ſhall we tamely ſee ſuch Rapes and Violences Committed on her, who ought certainly to be Cheriſhed and Improved with all the Tenderneſs and Care imaginable? 'Twas the Policy of our Anceſtors to reſpect her as the Guardian-Angel of their Iſland; and ſhall the preſent Fathers of our Countrey now look on with Unconcern? Can they behold theſe Horrid Violations, and not at all be mov'd! Certainly they can't Imagine but that ſuch Wretched Treatment muſt mightily Diſcourage Trade: It can't but ſtrike a Damp upon the Careful Merchant, and the Induſtrious Tradeſman, when they Conſider, That after all their Pains and Sedulous Application, the Labours of ſome Years may all be loſt in fewer Moments: For they are forc'd to ſeek Returns by Sale of their Commodities, with reaſonable Profit, and for this, Credit muſt neceſſarily be given: Now if they happen to Truſt a Knave, (as, modeſtly ſpeaking, 'tis two to one but they do) their Prime Coſt is alſo gone and ſunk, for 'tis plain there's no Remedy to Recover it; what is this but a Stab into the very Heart of Trade? I'm told it was a regard to Trade which was one of the principal Motives, that induc'd the Parliament to Suppreſs the late pretended Priviledg'd Places, where the Law was Cramp'd in the Execution*

Execution, and consequently Trade receiv'd a vast prejudice: But 'tis in vain to destroy some Nusances, if they leave others still remaining, which are worse, and more Dangerous: As the Wounds of Friends strike Deeper, and are more Fatal than those of Open Enemies: And as Extortions by Colour of Offices and Justice are greater Offences than downright Exactions; for that they pretend Law (the greatest Blessing of the Subject) for the Countenance of Villany and Wrong.

But I hope the Parliament will take this particular also into Consideration, That the White-Fryars *and* Mint *are not Crushed, so long as the Prisons of the* King's-Bench *and* Fleet *are in Being; for 'tis now become a Common Practice for Bankrupts and Cheating Knaves themselves to run into one, as they did into the other for Shelter and Protection.*

I am,

SIR,

Your Humble Servant,

J. B.

An ARGUMENT, *shewing, That 'tis Impossible for the* Nation *to be Rid of the Grievances Occasion'd by the Marshal of the* King's-Bench, *and Warden of the* Fleet, *without an Utter Extirpation of their present Offices. With* Proposals *for a* New Constitution *of those Offices, &c.*

SIR,

SINCE I am inform'd that the Grand Inquest of the Nation hath Resolved (once more) to take the Abuses of the *King's-Bench* Prison, and *Fleet*, into Consideration, I thought it my Duty, as an *English* Man, who by Birthright am Intitul'd to all the Benefits of the Noblest Constitution in the World, to offer my Sentiments, in Order to have these Grievances Redressed, which have so long Eclips'd the Glory of it, by depriving us of the Fruit and Execution of the Law; which Consequently must Languish and Expire, since it is Wounded in the Vital Part, for *Executio Legis est Anima Legis.* And without the Soul, the Letter of it is but a Dead Carcass, which can't preserve, nor be preserved from Ruin; so that a Failure of Justice it self must necessarily follow, than which, there can't be a greater Scandal and Reproach to Government: I shall Entertain you no longer upon a Subject which is so Obvious to Common

View;

View; neither ſhall I recite to you the particular Villanies and Oppreſſions of the *Marſhal* and *Warden*, for to Rake into Dunghills and their Priſons are the ſame thing, nought but Stench and Noiſomeneſs can thence ariſe; beſides we ought to take thoſe Matters for granted, ſince the late Act of Parliament does expreſly ſet forth in the Preamble:

"That by reaſon of the many grievous Extortions, and "ill Practices of ſuch Perſons, who have for ſeveral Years "laſt paſt reſpectively Executed the Offices of *Marſhal* of "the *King's-Bench*, and *Warden* of the *Fleet*, both *Credi-*"*tors* and *Debtors* have been notoriouſly Abuſed, and "the good Intents of the Law wholly Eluded.

And, Sir, I am ſorry to ſay ſuch a Fatality attends thoſe Priſons, that even the good Intent of that Statute ſeems alſo to be wholly Eluded, as well as that of the Common Law: The Complaints of this Seſſions do abundantly teſtifie the Truth of this Aſſertion, for tho' in purſuance of that Statute ſome Perſons have Recovered Judgments in Actions of Eſcapes, againſt thoſe Officers, yet here alſo they are come to their Journeys end, and after all their Tedious and Expenſive Travel, find nought but Labour for their Pains: So that all thoſe excellent Proviſions againſt thoſe Grievances are rendred Uſeleſs and Inſignificant, and all the mighty Advantages which that Act was thought to Produce prove Imperfect and Abortive, and our great Expectations are Dwindl'd into Air.

Thus I have given you a ſhort State of this Malignant Diſtemper, which has ſo long raged in the Bowels of the Body Politick, a Diſtemper not in its Infancy, it has been growing on us for ſome Ages paſt, and is arrived now to its full Strength and Vigour, it ſeems to be Radicated in the Blood, and dares Maintain its Poſt *Bravado* like, and bids Defiance to the feeble Acts of vulgar Phyſick; ſo that the

the Common Law having been baffled by this Potent Enemy, the *Legiſlature* muſt be call'd upon for Aid. And nothing under Heaven but the Power and Wiſdom of an *Engliſh* Parliament can ſtop the Progreſs of ſo Inveterate a Canker to the Common Wealth: And I ſubmit it to their Conſideration whether they muſt not now purſue the ſame Methods in this mighty Cure, as ſome Phyſicians uſe in Chronical Diſeaſes, where all the Nervous Juices, and the whole Maſs of Nature are Corrupted (*Viz.*) a Thorough Flux, that the whole Malignancy may be rooted up, and a new Stream of Blood run in freſh and untainted Channels. And therefore unleſs there be an Intirely New Conſtitution in theſe Offices, unleſs their Old Bottom and Foundation be not only Shaken, but totally Deſtroyed; I am of Opinion that all other Remedies will be but patching, we may be Eaſed a while from Pain, but the rank Poiſon ſtill remains, and will ſoon get Head again in ſpight of all thoſe Temporary Applications.

Now, Sir, to come to the main Point, in Order for a Redreſs, I take the Firſt Step towards it, to be an Enquiry into the Cauſe of this Miſchief, and for this we muſt Trace the Original Fountain, from whence theſe Offices proceed: And I take it that in their Primitive State they were derived from the King, who being Intruſted with the whole Executive part of the Law, thought fit to Grant thoſe Offices by Letters Patents, either for Life, as *Henry* the Fourth did to *William Finborough*, 2 *Roll. Abr.* 152. Or in Fee-Tail, as *Henry* the Sixth did to the Duke of *Norfolk*, 39 *Hen.* VI. 34. Or ſometimes for a Term of Years, as King *James* the Firſt did to Sir *James Elphinſtone*, tho' this was adjudged a void Grant, 9 *Rep.* 96. And laſt of all, theſe Offices were Granted in Fee-Simple: And the Firſt Grant of this Nature of the Marſhal's Office that I have met with, was by King *Charles* the Firſt, to Sir *John Lenthall*,

Hall, under whoſe Title the preſent Proprietors Claim. What I Obſerve from theſe Grants is this, That thoſe who firſt advis'd the Kings of *England* to Grant ſuch Eſtates in thoſe Offices to Private Perſons, might be good Courtiers, but I am ſure they were but indifferent Patriots, they Conſulted their Princes Profit, and perhaps raiſed a good Sum for the preſent, but they forgot their Countrey's Intereſt, and had no regard to Poſterity, for by Granting ſuch long and abſolute Eſtates, great Inconveniencies to the Publick have Enſued.

As Firſt, That ſuch Eſtates being Inheritances, the Owner may make 'em Subect to Judgments, Mortgages, and other Incumbrances; from which Two Miſchiefs do ariſe: One, That this Office may be under continual Diſtraction, always tearing to Pieces by the ſeveral Creditors, by which the ſafe Cuſtody of the Priſoners muſt be neglected: And the Other, That no Creditor knows againſt whom to bring his Action for an Eſcape, for that thoſe Incumbrances are made in Secret, and always Shifting from one to another, induſtriouſly to Cheat the Plaintiff, ſo that the Profits of the Office cannot poſſibly be reach'd; and 'tis no anſwer to ſay, there is a *Marſhal* and *Warden* conſtantly Sworn, whoſe Bodies are liable to the Plaintiffs Action; for the Body when in Priſon is no Satisfaction, but only a Pledge for the Debt till it be Satisfied: Beſides the Bodies alſo of the *Marſhal* and *Warden* are Priviledg'd from being taken in Execution; and ſo it was Reſolved in *Sid. Rep.* 68.

And I would put this Caſe, Suppoſe the *Warden* of the *Fleet*, who hath his Office in Fee, Dies, his Son and Heir being at that time Impriſon'd there, and the Office deſcends to him, being in Priſon, now the Law Judges him to be immediately at Large, tho' he has Fetters on his Feet, becauſe he cannot keep himſelf in Priſon. There's another

another Case in *Plowden*, fol. 37. And that is, Where a Woman is *Warden* of the *Fleet* by Descent or Purchase, and one in Prison Marries the *Feme*, who is *Warden*, the Law Adjudges him out of Prison, for he cannot be in Ward to his Wife, (tho' perhaps some others are) so that here is also a Lawful Escape, tho' it seems a little Odd that Right and Wrong should be the same thing, and joined together: Yet 'tis so here, for an Escape is certainly Tortious and Unjust, and yet for an Inheritance to Descend, and for a Woman to Marry is surely rightful and just: Then for the Declaration in this Action of Escape against either of 'em, it must be a Special one indeed, for the Plaintiff Declares; That the Son or the Husband, being in Custody, did so negligently keep himself that he did permit himself to go at large against the Plaintiffs consent, &c. Ay, and against his own Consent too, for the Law would have it so, whether he would or no: The Son was only Passive, and suffered the Inheritance to Descend upon him; and 'tis hard a Man should be punished for having an Estate. The Husband indeed was Active and push'd forward to Matrimony, but 'tis as hard that he should be punished for a Righteous and Holy Act.

I have dwelt the longer upon these Cases, for that I conceive they give a lively Instance of the Difficulties which the Grants of those Offices in Fee, have brought upon the Common Law, which are no less than the Subversion of Fundamentals, for the very Definition of the Law it self is destroyed; *Lex est Sanctio sancta jubens honesta & prohibens contraria*, by these Examples the Law forbids honest things, and commands unjust and absurd things; that is, not to Marry, nor to have an Estate of Inheritance Descend upon the Heir, what is this but *Jargon* and Contradiction to the last Degree?

These, and many other Defects were Incorporated with the first Institution of these Offices, upon the Foundation of Inheritance, but as in other Cases, so in this, *Exuno dato absurdo mille sequuntur*; and certainly a thousand Tricks, Frauds, Shams and Rogueries, with a long Train of Oppressions, Extortions, Rapines, and unheard of Cruelties have been Occasion'd by that Fatal Grant, Witness so many hundred Families of *English* Freeborn Subjects, both of Creditors and Debtors, who by these Mercilesse Harpies have been Compelled, much against their Wills, to Agree in the same Funeral Pile of Common Ruine; so that if there can be any Motives from the Topicks of Honour, Justice and Compassion, sufficient to Engage the Fathers of our Countrey for an Effectual Redress of all these Wrongs, certainly they are to be found here, or no where in the World: I am very sensible that the Parliament hath already Interposed, as appears by the Act made in the Eighth and Ninth of His present Majesty. But my Complaint is, That the Incomparable and Excellent Design of that Act is altogether frustrated, the Remedy is not advanced, nor the Mischief at Common Law suppressed: And therefore 'tis, that I pray a *Melius Inquirendum*, That our Great and Wise Legislators, would Indulge us with a Bill of Review, in Order to Re-examine the whole Matter, and to make a strict Enquiry into the Grounds and Causes upon which so Noble a Design Miscarried: And this leads me to the Consideration of the late Act of Parment.

First, It is Enacted, "That all Prisoners, who are, or "shall be Committed to the Custody of the *Marshal* of the "*King's-Bench* Prison, or *Warden* of the *Fleet*, shall be "actually Detained in the said Prisons of the *King's-Bench* "and *Fleet*, or the respective Rules of the same. And if "the said *Marshal* or *Warden* shall permit and suffer any "Prisoner,

" Priſoner, Committed to their Cuſtody, either on *Meſne*
" *Proceſs*, or Execution, to Go, or be at Large, out of the
" Rules of their reſpective Priſons (except by Virtue of
" *Habeas Corpus*, or Rule of Court, which Rule ſhall not
" be Granted but by Motion made, or Petition read in
" Open Court) every ſuch going, or being out of the ſaid
" Rules ſhall be Adjudged and Deemed to be an Eſcape.

I am at a loſs what is meant by theſe *Rules*; neither can I find one of the Old Law Books, that will furniſh me with an Expoſition of that Word, in reference to Priſons: Indeed the Rule of Law is the Meaſure and Standard of it, which is grounded upon the moſt ſolid and refined Reaſon imaginable, a Reaſon acquired by long Study, Obſervation and Experience: But the other ſort of Rules are the *Reverſe* and *Antipodes* of the Rule of Law; the one is an Oppoſite and flat Contradiction to the other: There is ſo vaſt and wide a Difference between them, that they are no more to be Reconciled than the North and Southern Poles, for the Rules of theſe Priſons do plainly Trample upon all the Rules in Law.

Sir, I will only give you a few Inſtances, for I labour to be ſhort, and am afraid to exceed the bounds of an Epiſtle: I ſhall firſt quote to you the Caſe of Sir *George Reynell* in my Lord *Coke* 9 *Rep.* 97. where 'tis Reſolved by the Judges, that this very Office of the *Marſhal* of the *King's-Bench* Priſon, was an Office of great Truſt, annexed to the Perſon, and concerns the Adminiſtration of Juſtice, and the Life of the Law, which are to keep thoſe who are in Execution, *in ſalva & arcta Cuſtodia*, to the end that they may the ſooner pay their Debts, *&c.* And in the ſame Book, *fol.* 87. it is ſaid, That every Keeper ought to ſecure his Priſoner *in ſalva & arcta Cuſtodia*, ſo that ſuch Priſoner by the Common Law, ſhall avoid a Deſcent, Caſt, or Fine Levyed, during his Impriſonment,

ſonment, becauſe the Law preſumes in reſpect of his ſtrict Ward, he cannot have Conuſance of the Diſſeiſin, or Fine to Command an Entry, or Claim to be made; and ſo are the Old Books, *Bracton l. 6. 3. f. 436. Britton* 116. and *Fleta l. 6. c.* 52, 53. Now let us conſider the Nature of the Rules of thoſe Priſons, and make our Application: Thoſe Rules then do contain ſuch a particular Space of Ground Adjacent to the Priſons, as the *Rules* of the *King's-Bench* do Comprehend; The *Park*, St. *George's-ſtreet*, and ſome other Places: And the *Rules* of the *Fleet*, *Ludgate-hill*, the *Old-Baily*, &c. In any of theſe Places, 'tis Lawful for the Priſoners (if they may he call'd ſo) of either of thoſe Priſons to Reſide: And in Fact abundance of 'em are, to the great Expence and Vexation of themſelves and Creditors, Lodg'd up and down within theſe *Rules*: Firſt, to their own Expence, for that they not only pay Rent for their Lodgings with their Landlord, but they muſt alſo give Extravagant, and Exceſſive Rates for a Chamber, which they are ſuppoſed to have within the Priſon. Indeed the late Act has reduced the Old Exorbitant Rates to Two Shillings and Six Pence *per* Week, and that not to be Paid neither, unleſs they are in actual Poſſeſſion of ſuch Chamber, within the Priſon; and if the *Marſhal*, or *Warden*, demands any greater Rent, he Forfeits Twenty Pound: One would have thought, that theſe Words being ſo plain and expreſs, this Miſchief had been Redreſs'd, but 'tis ſtill the ſame, the Name is only chang'd, for the poor Priſoner muſt pay according to the Ancient Rate, only now, no Rent is demanded, but all is Shelter'd under the Notion of Civility-Money, and if he does not Diſcharge this Acknowledgment, the *Mirmidons* will quickly Dragg him into the real Priſon, and teach him better Manners. This Contrivance puts me in mind of the Old *Romiſh* Prieſts, upon whom my Lord *Coke* has this Ob-

Obſervation, That for ſome Ages together, they ſtill found ſome Evaſions to Creep out of the Statutes of *Mortmaine*: But *Henry* the Eighth took a true Method to Obviate this, and other Miſchiefs, which thoſe Locuſts in the Common Wealth had introduced, by pulling 'em up, both Root and Branch. Then as to their Creditors, it can't but be a mighty Vexation to them, to think that after all their Trouble and Coſts at Law, to Charge their Debtors in Execution, by which they propos'd only the Confinement of their Bodies; that yet notwithſtanding all their Endeavours, they ſhould in ſpight of 'em have their Liberty, it can't but Teaz an honeſt Tradeſman to his Soul to ſee his Debtor, under Condemnation, Strut it with his Sword, and Noſe him at his very Door: That this is Fact no Body can deny; for 'tis the Daily Practice of all thoſe pretended Priſoners in the *Rules*, to walk where they pleaſe in all the ſeveral Parts of the Town, and to be ſure they'll Croſs the Street on purpoſe to put their Creditors on the Fret, and Brave it to their Faces: Beſides ſome Creditors on *Ludgate-hill* are ſo unfortunate, as to have their Debtors come and Live next Door to them; perhaps the Creditor and Debtor may Lodge in the ſame Houſe, and this is worſe than only loſing the Debt, for he's Laught at to boot: Can this Creditor think any thing, but that the Law is a Jeſt? He can't think it in Earneſt ſure, when it calls his Debtor's Lodging there an Impriſonment, and his Debtor a Priſoner; for by the ſame Parity of Reaſon the Creditors Lodging is alſo a Priſon, and the Creditor himſelf is become a Priſoner: He may well cry out, this is a Dream, or elſe we live in an Age of Miracles and Contradictions.

But, Sir, that which I inſiſt on is, That not only the Going of theſe Sham-Priſoners out of thoſe Places they call the *Rules*, but alſo their Living within 'em, out of the Priſon,

Priſon, is an Eſcape in Law, But I muſt not be underſtood to mean, that their being out of the Priſons of the *King's-Bench* and *Fleet* only is an Eſcape, if they are in any other Priſon it is well enough. I know it was Adjudged in *Cro. Car.* 210. that the *King's-Beneh* Priſon was not Local, but any Place where a Man is Reſtrain'd of his Liberty is a Priſon, and in the ſame Book, *fol.* 266. It is Reſolved, by all the Judges of *England*, That the *Warden* of the *Fleet*, and the *Marſhal* of the *King's-Bench*, may keep their Priſoners in any other Place of the County: But then they ought to be kept as Priſoners, *Sub ſalva & arcta Cuſtodia*: Whereas in our Caſe, 'tis not pretended that they are in Cuſtody within theſe *Rules*, nor that there is any manner of Keeper with 'em, they have the ſame Freedom and Liberty of *Egreſs* and *Regreſs* with other Perſons, to Go, and Come when they pleaſe, without any manner of *Guard du Corps* attending of 'em; perhaps ſome of the more Cautious, when they are to go Abroad amongſt their Creditors, will now and then take a Follower with 'em; but however in point of Law, this won't do neither, for 'tis Adjudged in *Boyton's* Caſe, the 3 *Rep.* 44. and ſo is my Lord *Dyer* 278. and *Hult* 202. That if the Sheriff ſuffer the Priſoner to go abroad with a Bayliff or Keeper, yet this is an Eſcape, for that he ought to be kept *in Safe and Strait Cuſtody*, which can't be ſaid when his Arms and Legs are at Liberty, with his Sword by his Side, and only one Scoundrel to Attend him.

There are Multitudes of Authorities, which ſhew the Strictneſs and Severity of the Law, as to the Confinement of the Priſoner's Body: And the Political Reaſon of this Rigorous Uſage is, That the Priſoner, being uneaſie under it, might the ſooner be induced to regain his Liberty, by Diſcharging his Juſt and Honeſt Debts. So that ſince the *Rules* of theſe Priſons do directly Subvert the Good and Ancient

Ancient Maxims of the Common Law, it will certainly be worth the Enquiry of the Committee, to know when, and by what Authority theſe *Rules* were firſt ſet on Foot; and whether the preſent Uſe of 'em does Anſwer to their Original Inſtitution, I Confeſs I have Endeavoured to Trace 'em to the Fountain, from whence they firſt Sprung; but the firſt and only Book where I find the *Rules* taken Notice of, is in *Sid. Rep.* 384. where 'tis ſaid by my Lord Chief Juſtice *Keeling*, That by reaſon of the Removal from other Priſons, there being more Priſoners than the *Kings-Bench* Priſon could contain, therefore the Priſon was Enlarged, by the Direction of the Court, which Enlargement is call'd the *Rules*, which are Houſes Adjacent, Hired by the *Marſhal*.

So that here the Authority appears, by which they were introduced, *(viz.)* by the Direction of the Court, and I don't ſee any harm in this Direction, if it was only to Enlarge his Priſon-Houſe, or to keep the Priſoners in another Houſe, and Place, provided they are kept in Safe Cuſtody. But what if theſe *Rules* of late Years are Degenerated, and are quite of another Nature, from thoſe which were at firſt Allowed? For now the *Rules* are not Hired Houſes by the *Marſhal*, nor any part of a Priſon, they ſcorn the Scandal of that opprobrious Name, the Gentlemen only take Lodgings for their Conveniency, within certain Places called the *Rules*. And what if theſe *Rules*, as they are Eſtabliſhed upon this new Bottom, ſhould alſo be Approv'd of by the Rule and Direction of the Court? Why truly, if the Caſe ſhould be ſo, I take it clearly, That this Rule, and Direction of the Court, is againſt the Law of *England*. This may ſeem a little roundly Expreſt, and perhaps may look ſomewhat Peremptory to thoſe who don't Conſider, That the Judges are but Men, *& Humanum eſt Errare*, ſays my Lord *Coke*, the great Oracle of our Law,

who himſelf could not eſcape being Cenſured, eſpecially in the Zenith of his Court Preferments: So the Lord Chief Juſtice *Keeling* was miſtaken in Point of Law, when he Fin'd, and Committed ſome of the Jury to Priſon, for not giving a Verdict to his Mind, which Error he acknowledg'd upon his Knees at the Bar of the Houſe of Commons: So it appears, in 1 *Sid.* 218. that the whole Court of *King's-Bench*, miſtook the Law, when by their Rule they Impoſed a Watch and Ward in *Weſtminſter*, and laid a Tax upon the Inhabitants, to defray the Expence of it; This was indeed a pretty bold Stroke, or certainly a Prodigious Miſt clouded their Underſtandings, for every vulgar Eye might at firſt Glance diſcover the Weakneſs of that Rule, which was made in direct Oppoſition, of the great Priviledge of Parliament, and I wonder they eſcaped the ſevereſt Cenſure of it: But my Lord Chief Juſtice *Scroggs* had not ſo good luck, for one of the Articles of Impeachment againſt him was, for that he had caus'd an Illegal and Arbitrary Rule, to be Entred in the Court of *King's-Bench*, againſt the Printing of the *Weekly Packet of Advice from* Rome; 'twas his Misfortune, but the Nation's Happineſs, that he liv'd at a time, when the Parliament would not ſuffer the meaneſt *Engliſhman* to be Oppreſſed with Impunity: It was that Immortal and Prophetick Parliament, commonly called the *Excluſion Parliament*. And ſince I chance to mention that Generous and Heroick *Senate*, I can't forbear making this ſhort Obſervation: It was, *Caſſandra*-like, theirs, and the whole Nation's unſpeakable Calamity, not to be believed; for which Stubborn, and vaſtly Pernicious, and only not Fatal Blindneſs of the Church, (for there it went) What a Chain of Horrours, Darkneſs, and Confuſions did Enſue? What a Scene of Tragical Tyrannies and Depredations, were every where Diſplay'd throughout the *Britiſh* Iſle? Our Civil Rights were

were Loſt, and intirely Swallowed up by that Voracious Monſter, called, *Prerogative of the Crown*, and our Religious ones, were reduced to the very Brink and Precipice of Deſtruction: But when the Church looked down and ſaw the great Abyſs in which they were Eternally to ſink; then they Cry'd out for help, and Providence brought 'em an Aſſiſtance, which hath ('tis true) Redeem'd us, but not without the Expence of Millions of Sacrifices Offered up, not of Beaſts, as thoſe of the Ancients were, but of the Nobleſt Human Blood and Treaſure.

But after this ſmall Digreſſion to purſue the Thread of my Diſcourſe, I was giving you ſome Inſtances, where the Courts in *Weſtminſter-Hall* have given Signal Proofs of their Fallibility: And what I infer from hence is; That the Rules of Court ought not to be taken upon Truſt, nor as if they were undoubtedly Legal, becauſe they are Rules of Court: And therefore if any ſuch have been made, in reſpect of the *Rules* of the *Fleet*, and *King's-Bench* Priſons, it may be reaſonable for a Parliament to Enquire into the Juſtice and Validity of them. And this brings me to Conſider that other part of the Enacting Clauſe, where 'tis ſaid,

"That no Priſoner ſhall be ſuffered to go at large, ex-
"cept by Virtue of ſome *Habeas Corpus*, or Rule of Court;
"which Rule of Court ſhall not be Granted but by Mo-
"tion made, or Petition read in Open Court, *&c.*

So that if there be a Rule of Court for it, a Priſoner now may lawfully go abroad: This is, I Confeſs, an Extraordinary Clauſe, and looks as if a Judge himſelf, or at leaſt ſome Body who was pretty ſure of being one, had Penn'd it, for it gives the Court an Arbitrary, or which *Tantamounts*, a Diſcretionary Power, to Releaſe all the Priſoners in *England*. I don't ſay, or believe, that they will ever Exert it to ſuch a height: But why ſhould the Court have a Power to do it if they pleaſe? Why ſhould the

Debtors Reſtraint any more than the Creditors Liberty be Precarious? Since the ſame Laws are the Meaſures of both, and a Violation of the one may ſoon be followed by a Violation of the other; for they who have an Abſolute Power to give Liberty, may in time pretend to that of Reſtraint. 'Tis true, we are Secure from all Apprehenſions of this Nature, during the preſent Government, who may doubtleſs Challenge all the Reigns ſince the Conqueſt, to produce a more Auguſt and Reverend Bench for Learning, Temper and Integrity: So that it ſeems the peculiar Happineſs of His Majeſties mighty Genius, to be Bleſſed with Council at Home, equal to the Succeſs of his Arms Abroad, that he might Triumph both in Peace and War.

But 'tis Poſterity that I am labouring for: What if in proceſs of time a Deluge of Oppreſſion, and Tyranny, ſhould again Overwhelm us? What if ſuch a Sett of precious Judges ſhould be trumpt up as the late Reign produced? Some of which were the Scum and Refuſe of the Law, a Diſgrace and Scandal to the Robes they Wore, and all (but one) were baſe Deſerters of their Countrey's Cauſe, and were cull'd out for no other End, but to put the great Machine of Arbitrary Power into Motion, which they did effectually Perform, by proſtituting the Laws, Religion, Honour, and Juſtice of the *Engliſh* Nation, to the Vile Luſt of a Superſtitious and Deſpotick Monarch.

But as I was Obſerving, how Dangerous would it be to Intruſt ſuch a Power in the Hands of *Renegado* and *Apoſtate* Judges, who might Raiſe Vaſt and Immenſe Sums, by Granting ſuch Rules of Enlargement? If the late Lord Chief Juſtice Sir *Robert W.* had been Inveſted by Act of Parliament with ſuch a Diſcretionary Power, he might in his great Wiſdom have thought it an Eaſier, and more Honourable Way of Supplying his Neceſſities, than by Mortgaging his Eſtate a Second time, and adding Perju-

ry.

ry to the Bargain, by making an Affidavit, that 'twas free from all Incumbrances; beſides, he might have thought this Power a Perquiſite to his Place; and that he might Juſtifie this Method of making up the Loſs of his Sallary, the greateſt part of which went on t'other ſide of the Hall.

I know it may be Objected, That never ſuch a General Rule of Enlargement was made, nor perhaps ever thought on before, or ſince the making of the Act (tho' I ſhall quote one by and by, which was made long before that Act, and comes pretty near it) and that this Rule of Court, which is Excepted in the Act, is commonly underſtood of Day-Rules, and that only ſuch are Granted: Tho' I ſhould acknowledge this to be true, yet it admits of an eaſie Anſwer; for I am only Arguing that the Court May Grant a General Rule of Enlargement, by Virtue of this Act, and ſo they May Grant other Rules by Virtue of it: As for Inſtance, I don't ſee but the Court may now Grant a Rule to bring up a Priſoner to be a Witneſs at a Tryal at Bar, or to carry him to *York*, to be a Witneſs at a Tryal there; or upon any other Occaſion the Court ſhall think proper: Whereas before the late Act, I do not think ſuch a Rule was ſufficient, to Secure the Keeper from an Action of Eſcape. There is an Authority to this purpoſe in 1 *Sid.* 13. That if a *Habeas Corpus ad teſtificandum* be directed to a Gaoler, to bring up a Priſoner, who is in Execution, to be a Witneſs: If the Goaler by Virtue of this Writ brings the Priſoner, yet this is an Eſcape, for which he is Anſwerable, and why ſhould a Rule of Court have a greater prevalence, and force, than the King's Writ, which has been Eſtabliſhed by the Common Law, time Immemorial.

But pray let us Conſider a little the Nature of theſe Day-Rules, and how far they will ſtand the Teſt of a Legal Examination. This Rule, it ſeems, is made every Day in Term upon

upon Motion, or Petition, in which it is Suggeſted by the Priſoners, that they have Extraordinary Occaſions to go Abroad, to Direct their Attorneys, and Adviſe with Councel about their Buſineſs, and the like: Upon this the Court makes a Rule for them accordingly, but tis ſuppos'd they are to have a Keeper with 'em, tho' if they have, that will not alter the Caſe. But the queſtion is, Whether the Common Law does Allow, that a Priſoner in Execution may be permitted in any Caſe to go, and Adviſe with his Councel, tho' it may be about Matters which relate to the Cauſe of his Impriſonment? And I conceive that the Common Law does not Indulge any ſuch Liberty: And for this, I rely on Two Subſtantial Authorities; The Firſt is in *Plowden's* Commentaries 360. where 'tis ſaid, that a Man in Priſon, hath not liberty to go at Large, to make his Entry or Claim, or to ſeek Councel. The Other is in *Co. Lit.* 259. where 'tis alſo ſaid, That a Man Impriſon'd ſhall not be bound by a Deſcent, for that by the Intendment of Law, he is kept without Intelligence of things Abroad, and hath not Liberty to make his Entry or Claim, or to ſeek for Councel. I'll quote one Caſe more, and that is *Moſtin's* Caſe, in my Lord *Dyer* 297. which was this, *Moſtin* being in Execution in the *Fleet*, the Lord Treaſurer, and the Barons of the *Exchequer*, Commands, by their Order, or Rule of Court, that the *Warden* ſhould let the Priſoner go at Large, accordingly the Priſoner was let looſe; but the *Warden* in thoſe times paid for't in an Action of Eſcape, brought againſt him in the *Common Pleas*, where his Juſtification under the Rule of Court was not Allow'd. So that here's a Preſident of a General Rule of Enlargement; and what has been done, may be done, eſpecially when the Statute hath by ſo ſtrong an Implication, given the Court Power and Authority, to make ſuch another Rule, if they think fit.

I ſhall Conclude this Head, with an Obſervation, how much this Modern Practice of letting Priſoners go at Large by Day-Rules, differs from the Ancient Uſage, for in the *Year-Book* of the 39 *Hen.* VI. 33. is this remarkable Paſſage, "That the Court of *King's-Bench*, uſed every Term, "Once, or Twice, to ſend the Coroner to the *Marſhal*'s "Priſon, to ſee all the Priſoners, and if any of them were "wanting, he Mark'd their Names in a Book, and Inform'd "the Judges of it, and upon this, the Court would ask "the *Marſhal* what was become of his Priſoners, and if he "could not ſhew a ſufficient Cauſe, to Excuſe himſelf, the "Court did Record the Eſcapes of every one of 'em upon him. A very laudable Cuſtom, and if it were Revived at this Day, we need not be aſham'd of the Old Faſhion.

But this would Redound too much to the *Marſhal*'s diſadvantage, who, by theſe Day-Rules alone, may eaſily get Two Hundred Guinea's a Term, for tho' the Priſoners have a Rule, (which the *Marſhal* himſelf is very Solicitous to procure for 'em) yet there is no Stirring without coming to ſome Agreement with him; and ſuppoſe the Bargain to be ſtruck up for a Hundred Priſoners, at Two Guinea's a Head, it comes to that Sum, and all that he pays out of theſe Vaſt Perquiſites, is only a few New-Years-Gifts, and ſuch like Trifles; perhaps the Clerk of the *Rules* may alſo have a ſmall Acknowledgment for his great Favours.

Sir, by this time I hope you are ſatisfied, That the Commencement of this Act, hath but an indifferent Aſpect, and for this reaſon I do not expect any great Benefit from the other parts of it; for we have this Maxim in the Law, *Quæ malo inchoata ſunt Principio, vix bono peraguntur fine*; and I doubt this will Appear too Obvious, when we come to conſider the Concluſion of this Act. But by the way, I cannot but take Notice of that Clauſe, by which all Conveyances,

veyances, and all Truſts, and Declarations of Truſts, &c. any way relating to the Offices of *Marſhal* or *Warden*, are to be Inrolled: The Miſchief at Common Law was, that there were ſo many Secret Truſts of thoſe Offices, ſuch frequent Shiftings, and Transferrings of the Mortgages, and other Securities, to which the Profits were Subject, that 'twas Morally Impoſſible, for the Plaintiff to know, againſt whom to bring his Action, or to have any Remedy: And there were always Private Articles between the Superiour *Marſhal* or *Warden*, or the Perſon who had their Intereſt, and the Temporary *Marſhal* or *Warden*, who did actually Officiate; by which the Rents, and Profits, were totally Reſerved to the Superiours, and the others, were Obliged upon all Occaſions to follow their Directions, and to give up and Surrender at Command: So that theſe Underlings have all along been only Servants, and meer Tools, nothing but Statues ſet up to receive the Shot of the Creditors, and to Skreen their Maſters from any harm; and when one is Pierced thro' and thro', down he Tumbles, and another ſuch Logg is Advanced in his Room.

But beſides there is this to be Conſidered, That tho' the Plaintiff does know who is the Superiour *Warden* or *Marſhal*, or to whom the Profits of theſe Offices are Subject, or Conveyed in Mortgage, or in Truſt, &c. yet whether this Knowledge would now better his Caſe, in reſpect of any Action to be brought, or of his having any other Remedy?

'Tis true, the Stat. of *Weſtm.* 2 *Car.* 11. is expreſs, That where the Inferior Officer is not ſufficient, his Superiour ſhall Anſwer for the Eſcape of the Priſoner; and that was the Duke of *Norfolk's* Caſe, 39 *H.* 6. 34. But againſt whom ſhall this Action be brought? If againſt the Superiour, you'll have the ſame Effect, as if it were againſt the Inferiour; for the Proverb is here Inverted, it being *Like Man*

like

like *Maſter*; you can have nothing but Bones (if you can have that) from either of 'em, *Briggs* and *Lenthall* are of the ſame Leanneſs, tho' one ſeems Plumper in the Face than t'other; for the Reverſion of theſe Offices is not ſo Clear and Free, as it was in the good Days of *Henry* the Sixth: It has been long ſince Loaded and Incumbred with Mighty Burdens, it is ready to Sink and Expire beneath the Weight of 'em.

So that the Superiour's Intereſt being ſo far involv'd in Mortgages and other Incumbrances, let us ſee whether you have any Remedy againſt the Perſons who Claim under thoſe Titles, and I conceive there is none; for in your Action of Debt againſt any of them, you muſt Declare according to the Statute, That ſince the *Cuſtos Gaolæ non habeat unde ſolvat reſpondeat ſuperior ſuus qui Cuſtodiam hujuſmodi Gaolæ ſibi Commiſit*, &c. But the Mortgagee, or Truſtee, is not the Superiour *Marſhal* or *Warden*, neither did they know who Committed the Cuſtody of the Goal, for they concern themſelves only for the Profits, and not about him who actually Officiates: Beſides this would be Confounding Juriſdictions, and Mixing the Courts of Common Law and Equity together, for Mortgages and Truſts are the proper Objects of a Court of Conſcience: And indeed, as I conceive, Eſtates in Truſt were not Subject to any Judgment, Statute, or Recognizance at Common Law, until the Statute of *Frauds and Perjuries*, by which it is Enacted:

"That the Sheriff may make and deliver Execution of "all ſuch Lands, Tenements, and Hereditaments, as any "other Perſon or Perſons be in any manner of wiſe Seized "or Poſſeſſed, in Truſt for him againſt whom Execution "is Sued, as the Sheriff might have done, in Caſe the Party "himſelf had been actually Seized, *&c.*

So that since this Statute, if any Person had been Seized of the Reversion of these Offices, in Trust for the Superiour *Marshal* or *Warden*, no doubt but it would have been liable to Execution, as well in the Hands of one as t'other: But this is not our Case, for the Trustees here are Seized in Trust for the Mortgagees, or other Persons who Claim under the several Incumbrances, with which these Offices are Charged, by the Superiour *Marshal* or *Warden*. So that tho' these Titles are Inroll'd, yet they afford the Creditor but a Melancholly Prospect, since they are wholly Exempted from, and in point of time Prior to his Action, and consequently must Command Precedency.

And for the same reason, the mighty hopes of speedy Justice, which People had Conceived of the *Sequestration Clause*, are also Vanished: The words of it are as follows:

"The Judges shall, after Oath made that the Judgment "was obtain'd without Fraud, upon Motion, Sequester the Fees and Profits of the Office of *Marshal* and "*Warden*, and in the first place apply the same towards "Satisfaction of the Debt or Debts, due from the Prisoner "who Escaped.

This indeed, as well as the last Clause I mention'd, would have been of excellent use *in Diebus illis*, when the Sky was Serene and Clear, and no Clouds Overshadow'd any part of the Office: But now since the whole is cover'd with Mists, and Obscure Intreagues, the Scene is quite Alter'd, the Judges are at a loss where to find the Profits, or if they are found out by the Inrollment, yet they must be Excused, for they are Pre-ingaged, and all Pre-ingagements must in Justice, as well as Honour, be Allow'd of: And therefore tho' the former part of the Statute does positively Affirm, That the Fees and Profits

shall,

ſhall, in the firſt place, be Applied towards Satisfaction of the Priſoner's Debts; yet the latter part does as poſitively Deny it: For that Saves all the Rights, Titles, Intereſts, and Securities of *Johnſon*, *Boulter*, *Norwood*, &c. which they have in the ſaid Offices, or the Profits thereof.

And now *Their* Demands muſt be firſt Satisfied, ſo that this Unfortunate Act of Parliament Commits a Violence on it ſelf, ſeems to be a *Felo de ſe*, and by a Fatal Contradiction, gives its own Heart a Mortal Wound. And after all, Suppoſe the Judges ſhould Sequeſter the poor Remnant of the Profits (if any ſuch there be, when all the Pre-ingagements are Diſcharg'd) I would then ask this ſingle Queſtion, by whom ſhall the *Marſhal* or *Warden*, who does Officiate, be paid his Sallary? (for the poor Creature muſt have a Livelihood) I doubt the Court will want their Officer, unleſs they can ſuppoſe that one Skeleton may live upon another; for by this time both the Office and Officer muſt be reduc'd to a mighty thin Contexture. I have now done with this Famous Act of Parliament, of which we were ſo big with Expectation, and I'm ſorry it ſhould be ſaid at laſt, *Parturiunt Montes.*

Having thus made the Way Clear, and I hope given you Convincing Proofs, Drawn from the Sacred Repoſitories of our Law, that the preſent Foundation, as well as Management of theſe Offices, is Diametrically Oppoſite to the reaſon of the Common Law, and wholly Inconſiſtent with the Noble Frame of the *Engliſh* Happy Conſtitution; I come now to Offer my Humble PROPOSALS to the *Parliament* for a New and Regular Eſtabliſhment of theſe Offices, which in themſelves I own are an Eſſential part of the Common Wealth.

I. That the preſent Officers of the *King's-Bench* and *Fleet*, the *Marſhals* and *Wardens*, Superiour and Inferiour, with all the Train of Rubbiſh which Attends 'em, may be Diſmiſs'd their further Service; and tho' theſe Miſcreants have been ſuch Unprofitable Servants to all Mankind but themſelves, and by their Crimes, have undoubtedly Incurr'd a juſt Forfeiture of all their ſeveral Intereſts, yet that even thoſe who Purchaſed their Places for Valuable Conſiderations, ſhould be Reimburs'd their Purchaſe-Money, tho' this is a Favour which they can't pretend a Title to; and that which, perhaps, no other Power upon Earth, but an *Engliſh* Parliament, would Indulge.

II. That all Mortgages, and other Securities and Incumbrances whatſoever, which have been made really, and *bona fide*, upon Valuable Conſiderations, may be Paid Off, and Diſcharged, with Principal and Intereſt; which otherwiſe would have lain an Eternal Dead Weight on the Offices: For to be ſure the *Marſhal* and *Warden* would have kept all Incumbrances ſtill on Foot, on purpoſe to Secure the Profits thereof from being touch'd. So that until theſe Obſtacles are Remov'd, all Endeavours for an Effectual Relief muſt be Vain, Fruitleſs, and Inſignificant: And I am inform'd, That the whole Charge that will be requiſite upon this Occaſion, will not Amount to above Thirty or Forty Thouſand Pounds; a ſmall Recompence for a National Benefit; no more than ſome ſingle Regiments of the Army are to have before they are Diſbanded.

III. The Stage being Clear of theſe Vermin, like Snails let 'em carry their Houſes and Priſons with 'em, for indeed they are not large enough to Contain a Tenth Part of the Priſoners; which I take to be a ſtrong Argument againſt the poſſibility of the preſent Priſons anſwering the

Ends

Ends of the Law, (*viz.*) Confinement, *&c.* And therefore, as to the Foundation of this New Eſtabliſhment, in the firſt place, I Propoſe the Builing of Two Large and Capacious Priſons, which may be contrived to Contain Three or Four Thouſand Men apiece; and in each of theſe New Priſons a Work-Houſe, to be ſet apart, which cannot but turn to a very good Account; for not only our Manufactures might be thereby Improved by ſo great a Number of Hands, but alſo abundance of Miſerable Wretches, who are in a ſtarving Condition, and forc'd to Beg thro' a Grate, would find a Comfortable Subſiſtence: And beſides, there would be this particular Advantage to the whole Nation, That whereas now by the 43 *Eliz. c.* 2. the Juſtices of the Peace of every County and Corporation in *England*, are yearly to Rate every Pariſh towards the Relief of the Poor Priſoners of the *King's-Bench*; all this conſtant Charge and Expence, which has been paid already for near a Hundred Years, will be taken off, which otherwiſe might continue upon us, as a Rent-Charge, to the End of the World; ſo that the Nation will Diſcharge a Debt by this Means. Indeed I have often wondred that there have been no Proviſions hitherto made for the Setting poor Priſoners for Debt at Work, and why they ſhould be looked on as Uſeleſs and Rotten Members of the Common Wealth, any more than poor Priſoners Committed to Gaol for Felony, and other Miſdemeanors, for whom by the 19 *Car.* II. *c.* 4. the Juſtices of the Peace at their General Seſſions are to Provide a Stock of ſuch Materials as they think convenient, and fit Perſons to Overſee and Set them to Work.

Now for the Charge of theſe New Buildings, it may be ſo Managed as not to coſt the Nation a Farthing; for I do not queſtion, but there are Five Hundred Perſons in this Town, who would gladly Undertake the Building of

theſe Priſons, on the Terms of being Reimburſed by part of the Profits, which may Ariſe within the Walls, either by Chamber-Rent, or from the Priſoners Work, or other Methods, as ſhall be thought fit by Parliament.

IV. And in Order to Reduce the Number of the *King's-Bench* and *Fleet* Priſoners, by preventing the Removal of Priſoners from the Countrey Priſons: That no *Habeas Corpus* may be Allow'd, unleſs it be upon ſome Affidavit made of the Fact, by which it may appear to the Court, or the Judge, what the Nature of the Cauſe is, for which he was Committed, and if it appears to have been upon any *Meſne Proceſs*, or Execution for Debt, Damages or Coſts, *&c.* that either the *Habeas Corpus* may be Denied; or if the Matter be doubtful by reaſon of Croſs Affidavits, that the Priſoners may be brought up, and after Examination, be Remanded, as is uſual in Criminal Caſes: And I can't ſee what Occaſion there is of this *Habeas Corpus*, when the Priſoner may be as well Charged by a Copy of the Declaration delivered to him, or the Turn-Key in the Country Priſon.

V. That the Right of theſe Priſons may be Veſted either in the Crown, under ſuch Limitations and Controul of Parliament, as ſhall be thought proper: And that every Year the Judges ſhould preſent to the King, the Names of Four Good and Subſtantial Perſons, in the ſame Manner as they Preſent the Sheriffs, out of which the King may Chuſe One, to be the *Marſhal* of the *King's-Bench* Priſon, and another to be *Warden* of the *Fleet*. Or, ſince the old Right which flow'd from the Crown hath been Unfortunate, and it may be thought by ſome, a little Ominous, to have the New one deriv'd from the ſame Fountain: That then the Fee-Simple of theſe Offices may be Veſted in the Mayor and

and Commonalty of the City of *London*, as Superior *Marshal* and *Warden*, and that their Sheriffs may be Deputy *Marshal* and *Warden*; and may appoint the Keepers of the *King's-Bench* Prison, and *Fleet*, in the same Method as they do now the Keepers of their several Prisons within the City: So the Mayor and Citizens of *London* have the Shrievalty of *London* in Fee, and the Sheriffs of *London* are Guardians under them, and Removable from Year to Year. And in this Case the Sheriffs of *London* are Guardians of the Prisons and Gaols, and the Mayor and Citizens are their Superiors; and if the Sheriffs are not Solvent to Answer Escapes, the Mayor and Citizens are responsible for them, and this Appears in the 2 *Instit.* 381. And I take this to be the best and most excellent Model, as having so certain and undoubted a Fund, to Answer all Escapes which can possibly happen: And I am apt to believe, That the greatest part of the Citizens (who doubtless have suffered most by the Mismanagement of the present Officers) would be very willing of a New Constitution upon this Bottom, and would no more fear the Danger of Escapes, than they do at present; one of which does hardly happen in an Age out of any of the City Prisons.

VI. Since there must necessarily be a great Expence to the *Marshal* and *Warden* within the Prisons, in Servants and other Conveniencies, and also the Danger of Answering Escapes out of 'em; I doubt there must be a Considerable Allowance, sufficient to Encourage a Person of Worth and Substance to so great an Undertaking; I presume it must be Two Thousand Pounds *per Annum*, at least, for each Officer: But the particular Sum, and the Methods of Raising it, must be left to the Debates of Parliament.

VII. That

VII. That no *Marſhal* or *Warden* ſhall hold his Place above One Year: Theſe Offices are of ſuch Vaſt Importance to the Welfare of the Publick, and the Truſt Repoſed in thoſe Officers Hands, is of ſuch Ineſtimable Value, it being no leſs than the Life of the Law it ſelf, that I think no Man can pretend to Conduct and Integrity enough, to be Entruſted with ſuch a Treaſure for his Life: There's no one can ſay, but in a long Series of Years, as his External Goods are Subject to the Turns and Strokes of Fortune, ſo the Conſtancy of his Mind, may, by continual Attacks, at laſt be ſhaken: But in a Years time there may be few Temptations Offered; and who would Embrace 'em, and draw upon himſelf and Family an Age of Trouble and Misfortune, for a ſmall Gain, which cannot laſt above a Year?

VIII. That if this Right be Inveſted in the Crown, the King ſhall not Nominate any Perſon above the Degree of a Baronet, to be *Marſhal* or *Warden*; and for the more effectual preventing of any pretences to any Privilédge of being Exempted from Actions, *&c.* no *Marſhal* or *Warden* ſhall be capable of being Choſen a Member of Parliament; Two ſuch Truſts at the ſame time ſeem Incompatible; at leaſt they are too Weighty to be Managed by one and the ſame Perſon, to the general Satisfaction: Beſides, as it has been lately Obſerved by a Judicious and Learned Author, "All Wiſe Governments endeavour, as much as poſſible, to "keep the Legiſlative and Executive parts Aſunder, that "they may be a Check upon one another.

IX. That Annually at *Chriſtmas*, (or any other time) certain Perſons of known Honour and Integrity, may be Commiſſionated under the Great Seal of *England*, to Inſpect the Management of theſe Offices, and to Examine into all Abuſes and Irregularities of the *Marſhal* and *Warden*, or any

any of their Inferiour Officers, and to make their Report of the ſame at the next Seſſions of Parliament (if there be none then in being:) And it may be well worth the Conſideration of our Legiſlators, Whether a Triennial Viſitation in this Nature throughout the Realm, of all Temporal Officers and Miniſters, who are concern'd in the Adminiſtration of Juſtice, and Execution of the Laws, would not produce mighty Bleſſings and Advantages to the Publick, We ſhould not then hear ſuch Grievous Complaints againſt the Corrupt Judgments in Inferiour Courts, and the Abominable Extortions of their Officers: Nor ſhould our Ears be Pierced with the Sighs and Groans of a Thouſand Poor Unhappy Wretches, who Daily fall into the Clutches of the Little Petty-Fogging Solicitors, and Bayliffs.

I ſhall Conclude with a Recital of part of that great Lawyer and Stateſman Sir *Nicholas Bacon*'s Speech, which he made to both Houſes of Parliament, as appears in Sir *Simon Dew*'s Journal 152.

"Now to the Execution of Laws made by you, and "the reſt heretofore by others, I am to remember you, "That thoſe Labours, Travel, and Pains taken about the "Laws, are all in Vain, and Labour Loſt, without the due "Execution of them; for a Law without Execution, is "but a Body without Life; a Cauſe without an Effect; "a Countenance of a thing, and indeed nothing: Beſides "the making of Laws without Execution, does very much "harm, for that breeds and brings forth Contempt of "Laws, and Law-makers, and of all Magiſtrates; which "is the very Foundation of all Miſgovernance, of all In"juries and Injuſtice, and of all Diſorders and Unquier"neſs in the Common-wealth.

Thus, Sir, I have Ventur'd thro' Untrodden Paths, tho' 'tis indeed matter of Aſtoniſhment to think, That not one of all our Patriotical Lawyers ſhould have Engag'd long ſince, this great and terrible *Leviathan*, who thus Diſturbs our Peace, and Cracks the Sinews of the Body Politick: (for 'tis a true Obſervation, That the Laws are the Sinews of Peace, as Moneys are of War.) For my part, all that I can hope for from this poor Attempt, is, That ſome Strong and Abler Pen may be Encouraged from theſe ſmall Hints, to undertake the Cauſe: There can't be a Nobler Field to Exerciſe all the Faculties of the Mind, and Body; for Wit, Judgment, Manly Strength, and Courage, muſt all be Summoned to our Aid, againſt this Great and Common Enemy to the whole People of *England*: And after all, I'm afraid he'll prove too hard for any particular Body of Men, who dares wage War againſt ſo many Millions. We muſt at laſt beg the Aſſiſtance of the Legiſlature, and tho' even that, at the firſt Onſet, may give a little Way, and I doubt hath actually receiv'd a Foil: Yet I hope tis but *Antæus*-like, to riſe with greater Force and Vigour, and to Correct this daring Inſolence of Villany, that could pretend to Grapple with Almighty Power; for in reſpect of our Inferiour Orbe, ſuch is the Power of an *Engliſh* Parliament.

Sir, I ſhall Sum up all with this ſhort Addition, by way of *Corollary*: That 'tis Viſible to the whole World what Prodigious Things our Parliaments have done, ſince the Happy Revolution: They have fixed Matters of Religion upon a ſure, and laſting Foundation; and, to a Miracle, Reconcil'd the Feuds and Animoſities Rais'd upon that Score: They have Retrench'd the Exorbitances of the Prerogative, and Rivetted the Liberties of *England*, by the *Bill of Rights*; which, as a Second *Magna Charta*, deſerves

to

to be wrote with Characters of Gold: Our Properties have likewise been taken Care of, by several good Acts, and in particular, by that which Reforms the Coin: They have Carry'd on a War, and Procur'd a Peace, to the Surprize and Admiration of *Europe*. But after all these great and wonderful Performances, unless we can Enjoy the Fruits of Peace by a due Administration, and Execution of Justice, they have not finish'd Half their Work; for the Intestine Tumults and Commotions of a Distemper'd State, are more Intollerable than a Foreign War. Therefore I am clearly of Opinion, That the Mischiefs, and Distractions, which Daily Arise from these Infernal Offices, are not less Dangerous to our Constitution, than a *Standing Army*; and since your House is so Unanimous to Disband the One, I can't but think, that upon a serious and due Consideration, they will be as Zealous to Dissipate and Confound the other. And I hope this Parliament will have the Honour of so Great and Glorious a Reformation.

FINIS.

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